IN THE

Supreme Court of the United States

OCTOBER TERM, 1932.

No.

LOUIS H. MAY, INDEMNITY INSURANCE COMPANY OF NORTH AMERICA and ROYAL INDEMNITY COMPANY,

Petitioners,

—against—

HAMBURG-AMERIKANISCHE PACKETFAHRT AKTIEN-GESELLSCHAFT,

Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

This supplemental brief is filed solely to bring to the attention of this Court the decision handed down on June 22, 1933, by Judge Patterson in the United States District Court for the Southern District of New York, in the case of *Merklen* v. *Johnson & Higgins, et al.*, 3 Fed. Supp. 897.

In our petition and brief we pointed out that the decisions in the Second Circuit are hopelessly conflicting on the question whether lack of due diligence and unseaworthiness, not contributing to a subsequent loss, will deprive a ship-owner of the exemption granted in Section 3 of the Harter Act (Act of Feb. 13, 1893; U. S. C. Title 46, Sec. 192). We also stated that decisions on this point, in future cases in the Second Circuit, would apparently de-

pend on how the bench was constituted. It appears from the opinion in *Merklen* v. *Johnson & Higgins* that Judge Patterson shares our view as to the unsettled state of the law in the Second Circuit. In considering the argument that there must be a causal connection between unseaworthiness and disaster to defeat the carrier's exemption under Section 3 of the Harter Act, Judge Patterson says:

> "While the trend of decisions in this circuit seems to be to that effect, it is questionable whether the Circuit Court of Appeals has as yet definitely committed itself on the point. *The Elkton,* 49 Fed. (2d) 700; but see *The Isis,* 63 Fed. (2d) 248." (3 Fed. Supp. @ p. 898.)

The last case cited by Judge Patterson (*The Isis*) is the present case. It will be noted that Judge Patterson took the position that the decision of the Circuit Court of Appeals in the present case could not be considered as the final law of the Second Circuit, and in spite of that decision, he felt free to adopt a different view as to a clause substantially identical.

Respectfully submitted,

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Counsel for Petitioners.